



6560.50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA202-5203; FRL-9490-3]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia;
Update to Materials Incorporated by Reference**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials that are incorporated by reference (IBR) into the Virginia State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Virginia Department of Environmental Quality (VA DEQ) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, D.C., and the EPA Regional Office.

EFFECTIVE DATE: This action is effective [insert Federal Register publication date].

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW, Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability

of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814-2108 or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 Federal Register document. On April 21, 2000 (65 FR 21315), EPA published a Federal Register action beginning the new IBR procedure for Virginia. On September 8, 2004 (69 FR 54216), November 3, 2005 (70 FR 66769), July 16, 2007 (72 FR 38920), and July 13, 2009 (74 FR 33332) as corrected on December 18, 2009 (74 FR 67077), EPA published updates to the IBR material for Virginia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following Virginia regulations:

A. Added Regulations

1. 9VAC5 Chapter 30 (Ambient Air Quality Standards), Sections 5-30-15, 5-30-56, and 5-30-66.
2. 9VAC5 Chapter 40 (Existing Stationary Sources), Part II (Emission Standards), Article 51 (Stationary Sources Subject to Case-by-Case Control Technology Determinations).
3. 9VAC5 Chapter 85 (Permits for Stationary Sources of Pollutants Subject to Regulation), Parts I (Applicability), III (Prevention of Significant Deterioration Permit Actions), and IV (State Operating Permit Actions).
4. 9VAC5 Chapter 130 (Regulation for Open Burning), Part I (General Provisions), Sections 5-130-10 through 5-130-50.
5. 9VAC5 Chapter 151 (Transportation Conformity).
6. 9VAC5 Chapter 220 (Opacity Variance for Rocket Testing Operations Atlantic Research Corporation's Orange County Facility).

B. Revised Regulations

1. 9VAC5 Chapter 10 (General Definitions), Section 5-10-20.
2. 9VAC5 Chapter 30 (Ambient Air Quality Standards), Sections 5-30-15, 5-30-55, 5-30-60, 5-30-70, and 5-30-80.
3. 9VAC5 Chapter 40 (Existing Stationary Sources), Part I (Special Provisions), Section 5-40-20.
4. 9VAC5 Chapter 40, Part II (Emission Standards), Article 4 (Emission Standards for General Process Operations), Section 5-40-250.

5. 9VAC5 Chapter 50 (New and Modified Stationary Sources), Part I (Special Provisions), section 5-50-20.
6. 9VAC5 Chapter 80 (Permits for Stationary Sources), Article 8 (Permits-Major Stationary Sources and Major Modifications Located in Prevention of Significant Deterioration Areas), Sections 5-80-1615 and 5-80-1665.
7. The following regulations in 9VAC5 Chapter 140 (Regulation for Emission Trading):
 - a. Part I (NOx Budget Trading Program), Article 1 (NOx Budget Trading Program General Provisions), Sections 5-140-1010, 5-140-1020, and 5-140-1060.
 - b. Part II (NOx Annual Trading Program), Article 1 (CAIR NOx Annual Trading Program General Provisions), Sections 5-140-2010 and 5-140-2020.
 - c. Part III (NOx Ozone Season Trading Program), Article 1 (NOx Ozone Season Trading Program General Provisions), Sections 5-140-3010 and 5-140-3020.
 - d. Part IV (SO2 Annual Trading Program), Article 5 (CAIR SO2 Allowance Allocations), Section 5-140-3400.

C. Removed Regulations

1. 9VAC5 Chapter 40 (Existing Stationary Sources), Part II (Emission Standards), Article 4 (Emission Standards for General Process Operations), Sections 5-40-300, 5-40-310A.-E., and 5-40-311.
2. 9VAC5 Chapter 40, Part II, Article 40 (Emission Standards for Open Burning)- entire article.

II. EPA Action

In this action, EPA is doing the following:

A. In paragraph 52.2420(b):

Announcing the update to the IBR material as of October 15, 2011.

B. In paragraph 40 CFR 52.2420(c):

1. Consolidating Section 5-10-20 by reducing the number of entries from seven to two.
2. Placing the entries for 9VAC5 Chapter 220 before those of 9VAC5 Chapter 230.
3. Correcting a typographical error in the title heading entry for Section 5-40-20.
4. Correcting typographical errors in the “Title/subject” column for Sections 5-30-70 and 5-140-3400.
5. Correcting the date in the “State effective date” column for Sections 5-4-7410 and 5-40-7420,
6. Correcting in the “EPA effective date” column:
 - a. The date in Sections 5-40-7070 and 5-50-20.
 - b. The Federal Register citation for all of the entries in 9VAC5 Chapter 230.
7. Correcting the text in the “Explanation [former SIP citation]” column for Section 5-130-10.

C. In paragraph 52.2420(d):

Correcting the date format in the “State effective date” column for Global Stone Chemstone Corporation.

D. In paragraph 52.2420(e):

1. Restoring the entry for Documents Incorporated by Reference (9VAC5-20-21, Sections B. and E.1.), which had been inadvertently removed from the paragraph (e) table. EPA had approved this entry as a revision to the Virginia SIP on January 18, 2011 (76 FR 2829), with a

SIP effective date of March 21, 2011.

2. Correcting the date format for the following entries:

- a. Documents Incorporated by Reference (9VAC5-20-21, Paragraphs E.4.a. (21) and (22)).
- b. Carbon Monoxide Maintenance Plan for Arlington County & Alexandria City.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Maryland SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for Virginia.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 26, 2011

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV - Virginia

2. Section 52.2420 is amended by:

- a. Revising paragraph (b).
- b. In paragraph (c),
 - i. Removing the first five entries for Section 5-10-20.
 - ii. Revising the existing entries for Sections 5-30-70, 5-40-20, 5-40-7070, 5-40-7410, 5-40-7420, 5-50-20, 5-130-10, and 5-140-3400.
 - iii. Removing the existing entry for 9 VAC 5 Chapter 230, and adding a new entry for 9 VAC 5 Chapter 230 after the existing entry for Section 5-220-60.
- c. In paragraph (d), revising the entry for Global Stone Chemstone Corporation.
- d. In paragraph (e),
 - i. Adding an entry for Documents Incorporated by Reference (9 VAC 5-20-21, Sections B and E.1.) after the existing entry for Documents Incorporated by Reference (9 VAC 5-20-21, Section B).
 - ii. Revising the entries for Documents Incorporated by Reference (9 VAC 5-20-21, Paragraphs E.4.a. (21) and (22)); and Carbon Monoxide Maintenance Plan- Arlington County & Alexandria City.

The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after October 15, 2011 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region III certifies that the rules and regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules and regulations which have been approved as part of the State implementation plan as of October 15, 2011.

(ii) EPA Region III certifies that the source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated source-specific requirements which have been approved in the notebook “40 CFR 52.2420(d) – Source-Specific Requirements” as part of the State implementation plan as of June 1, 2009. No additional revisions were made since between June 1, 2009 and October 15, 2011.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814-

2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20460. For further information, call (202) 566-1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) EPA-approved regulations.

EPA-Approved Regulations and Statutes

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|------------------------------------|--|----------------------|------------------------|--|
| ***** | | | | |
| 9 VAC 5, Chapter 30 | Ambient Air Quality Standards [Part III] | | | |
| ***** | | | | |
| 5-30-70 | Oxides of nitrogen with nitrogen oxide as the indicator. | 8/18/10 | 6/22/11 76 FR 36326 | Sections A., D., and E. are modified. Sections B., C., F., and G. are added. |
| ***** | | | | |
| 9 VAC 5, Chapter 40 | Existing Stationary Sources [Part IV] | | | |
| Part I | Special Provisions | | | |
| ***** | | | | |
| 5-40-20 (except paragraph A.4.) | Compliance | 12/12/07 | 2/24/10 75 FR 8249 | Revisions to paragraph A.3 |
| ***** | | | | |
| Part II | Emission Standards | | | |
| ***** | | | | |
| Article 48 | Emission Standards for Mobile Equipment Repair and Refinishing (Rule 4-48) | | | |
| ***** | | | | |
| 5-40-7070 | Monitoring | 3/24/04 | 6/24/04 69 FR 35253 | |
| ***** | | | | |
| Article 51 | Stationary Sources Subject to Case-by-Case Control Technology Determinations (Rule 4-51) | | | |
| ***** | | | | |
| 5-40-7410 | Standard for nitrogen oxides | 12/15/06 | 1/19/11 | Added Regulation |

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|---------------------------------|--|----------------------|------------------------|--|
| | (1-hour ozone standard) Subsection F | 1/20/10 | 76 FR 3023 | |
| 5-40-7420 | Standard for nitrogen oxides (8-hour ozone standard) | 12/15/06 1/20/10 | 1/19/11 76 FR 3023 | Added Regulation |
| ***** | | | | |
| 9 VAC 5, Chapter 50 | New and Modified Stationary Sources | | | [Part V] |
| Part I | Special Provisions | | | |
| ***** | | | | |
| 5-50-20 | Compliance | 12/12/07 | 2/24/10 75 FR 8249 | Revisions to paragraph A.3 |
| ***** | | | | |
| 9VAC5, Chapter 130 | Regulations for Open Burning [Formerly 9VAC5 Chapter 40, Part II, Article 40] | | | |
| Part I | General Provisions | | | |
| 5-130-10 | Applicability | 3/18/09 | 3/14/11 76 FR 13511 | Formerly 5-40-5600 Provisions of this Chapter are applicable only in the Northern Virginia and Richmond Emissions Control Areas as defined in 9 VAC 5-20-206 |
| ***** | | | | |
| 9 VAC 5, Chapter 140 | Regulation for Emissions Trading | | | |
| ***** | | | | |
| Part IV | SO2 Annual Trading Program | | | |
| ***** | | | | |
| Article 5 | CAIR SO2 Allowance Allocations. | | | |
| 5-140-3400 | CAIR SO2 Annual trading budgets | 12/12/07 | 3/12/10 75 FR 11738 | 1. In section title, replace “State” with “CAIR SO2 Annual” 2. In paragraph 1, replace 2009 with 2010. |
| ***** | | | | |
| 9 VAC 5, Chapter 220 | Opacity Variance for Rocket Testing Operations Atlantic Research Corporation’s Orange County Facility | | | |
| 5-220-10 | Applicability and designation of affected facility | 12/1/02 | 9/4/09 74 FR 45766 | |
| 5-220-20 | Definitions | 12/1/02 | 9/4/09 74 FR 45766 | |
| 5-220-30 | Applicability of standard for | 12/1/02 | 9/4/09 | |

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|--|--|----------------------|------------------------|-----------------------------------|
| | visible emissions and standard for particulate matter | | 74 FR 45766 | |
| 5-220-40 | Compliance determination, monitoring, recordkeeping, and reporting | 12/1/02 | 9/4/09 74 FR 45766 | |
| 5-220-50 | Transfer of ownership | 12/1/02 | 9/4/09 74 FR 45766 | |
| 5-220-60 | Applicability of future regulations | 12/1/02 | 9/4/09 74 FR 45766 | |
| 9 VAC 5, Chapter 230 | Variance for International Paper Franklin Paper Mill | | | |
| 5-230-10 | Applicability and designation of affected facility | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-20 | Definitions | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-30 | Authority to operate under this chapter and FESOP | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-40 (Except A.7., A.9., A.10., and B.2.) | Sitewide Emissions Caps | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-50 | New Source Review program and registration requirements | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-60 (Except A.1.) | Other regulatory requirements | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-70 | Federal Operating Permits | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-80 | FESOP issuance and amendments | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-90 | Transfer of ownership | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-110 | Termination of authority to operate under this chapter and FESOP | 9/7/05 | 8/13/07 72 FR 45165 | |
| 5-230-120 | Review and confirmation of this chapter by Board | 9/7/05 | 8/13/07 72 FR 45165 | |
| ***** | | | | |

(d) EPA-Approved State Source-Specific Requirements

EPA-Approved Source Specific Requirements

| Source name | Permit/order or registration number | State effective date | EPA approval date | 40 CFR part 52 citation |
|------------------------------------|-------------------------------------|----------------------|------------------------|-------------------------|
| ***** | | | | |
| Global Stone Chemstone Corporation | Registration No. 80504 | 2/9/05 | 4/27/05 70 FR 21621 | 52. 2420(d)(7) |
| ***** | | | | |

(e) EPA-approved nonregulatory and quasi-regulatory material.

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|--|----------------------|------------------------|---|
| ***** | | | | |
| Documents Incorporated by Reference (9 VAC 5-20-21, Sections B and E.1.). | Statewide | 6/24/09 | 1/18/11 76 FR 2829 | Revised sections |
| ***** | | | | |
| Documents Incorporated by Reference (9 VAC 5-20-21, Paragraphs E.4.a. (21) and (22)). | Fredericksburg VOC Emissions Control Area Designated in 9 VAC 5-20-206 | 5/14/07 | 12/5/07 72 FR 68511 | State effective date is 10/4/06. |
| ***** | | | | |
| Carbon Monoxide Maintenance Plan | Arlington County & Alexandria City | 10/4/95 | 1/30/96 61 FR 2931 | 52.2465(c)(107). |
| | | 3/22/04 | 4/4/05 70 FR 16958 | Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6. |
| ***** | | | | |

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